

Notice of Allowability

Application No.

09/933,438

Examiner

Sharmila S. Gollamudi

Applicant(s)

MATAHIRA ET AL.

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 9/27/04.
2. ☒ The allowed claim(s) is/are 1,3,5-7,9,11-16,22-25 and 27-30.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of the:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date <u>7/19/04</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Richard Barth on September 27, 2004.

The application has been amended as follows:

Please amend claim as follows:

In claim 1, lines 2-3, delete the phrase "which comprises active ingredients, said active ingredients".

In claim 1, lines 3, insert "essentially" after the word "consisting" and before the word "of".

In claim 6, line 3-4, delete "which comprises active ingredient, said active ingredients".

In claim 6, line 4, insert "essentially" after the word "consisting" and before the word "of".

In claim 6, line 9 insert "selected from the group consisting of calcium, sodium, magnesium, selenium, iron, and zinc." after the word "mineral".

In claim 7, lines 5-6, delete "which comprises active ingredients, said active ingredients".

In claim 7, line 6, insert "essentially" after the word "consisting" and before the word "of".

In claim 12, lines 5-6, delete "which comprises active ingredients, said active ingredients".

In claim 12, line 6, insert "essentially" after the word "consisting" and before the word "of".

In claim 12, line 6, delete "synergistic" before the word "fatigue" and after the word "muscular".

In claim 12, line 7, insert "synergistic" before the word "effective" and after the word "controlling".

In claim 12, line 12 insert "selected from the group consisting of calcium, sodium, magnesium, selenium, iron, and zinc." after the word "mineral".

Cancel claim 26.

Cancel claim 31.

Claim 1 should read as follows:

Claim 1. A muscular fatigue-controlling composition consisting essentially of muscular fatigue-controlling synergistic effective amounts of (a) an imidazole compound which is anserine or a salt thereof and (b) D-ribose.

Claims 6 should read as follows:

Claim 6. A muscular fatigue-controlling composition consisting essentially of (i) muscular fatigue- controlling synergistic effective amounts of (a) an imidazole compound which is anserine or a salt thereof and (b) D-ribose and (ii) at least one substance selected from the group consisting of taurine, creatine, vitamin E, vitamin C, carotenoid, reduced glutathione, and a

Art Unit: 1616

mineral selected from the group consisting of calcium, sodium, magnesium, selenium, iron, and zinc.

Claim 7 should read as follows:

Claim 7. A method for providing a muscular fatigue-controlling effect comprising orally administering to a person in need thereof a muscular fatigue-controlling composition consisting essentially of synergistic effective amounts of (a) an imidazole compound which is anserine or a salt thereof and (b) D-ribose.

Claim 12 should read as follows:

Claim 12. A method for providing a muscular fatigue-controlling effect comprising orally administering to a person in need thereof a muscular fatigue-controlling composition consisting essentially of (i) muscular fatigue-controlling synergistic effective amounts of (a) an imidazole compound which is anserine or a salt thereof and (b) D-ribose and (ii) at least one substance selected from the group consisting of taurine, creatine, vitamin E, vitamin C, carotenoid, reduced glutathione, and a mineral selected from the group consisting of calcium, sodium, magnesium, selenium, iron, and zinc.

Reasons for Allowance

The following is an examiner's statement of reasons for allowance: The prior art of record does not fairly disclose or suggest a composition that consists of a specific combination of D-ribose and anserine as the active ingredients.

Although, JP 61-181357 teaches producing a beef flavor by heating a combination of dipeptide(s) selected from carnosine, anserine, and balenine and a reducing sugar selected from glucose or ribose, the instant invention is novel over the JP reference since the sugar in JP is

Art Unit: 1616

degraded in the process of making the composition. Therefore, JP does not teach ribose as an active ingredient in the composition.

The instant invention is novel over Hageman et al (6,420,342) in view of Harris et al (5,965,596) and Harris et al (5,965,596) in view of St. Cyr et al (6,159,942) respectively.

Although, Harris et al teach the administration of chicken broth, which inherently contains anserine, the instant claim language excludes other active ingredients such as those contained in Harris's chicken broth.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is 571-272-0614. The examiner can normally be reached on M-F (8:00-5:30), alternate Fridays off.

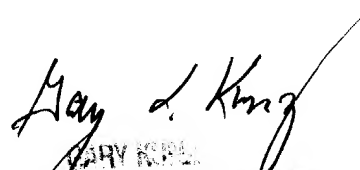
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1616

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sharmila S. Gollamudi
Examiner
Art Unit 1616

SSG


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